IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.137 OF 2006

The United India Insurance Co.Ltd. .. Petitioner

versus

The Honkong & Shanghai Banking

Corporation Ltd. .. Respondent

...

Mr.V.Y. Sanglikar for the petitioner.

Mr.R.A. Kapadia with P.D. Gandhy i/b Maneksha & Sethna for the respondent.

CORAM : D.G. KARNIK,J.

DATED : 6th March 2007.

ORAL JUDGEMENT:-

1. This civil revision application was heard by me in September 2006. However on account of

change of the roaster, the petition was made de part-heard. Thereafter, by an order of the Hon'ble the Acting Chief Justice, it has been re-assigned to me. I have again heard the counsel for the parties.

2. The facts lie in a narrow compass and are mostly undisputed. The respondent is an owner of the property known as Mercantile Chambers situate at Veer Nariman Road, Mumbai 400 001. The premises admeasuring 5759 sq.ft. situate at 3rd floor thereof (hereinafter referred to as "the suit premises") were let out by the respondent to the petitioner several years ago. Though the tenancy of the petitioner was terminated by a notice to quit dated 17th October 1992, it continued in occupation of the suit premises by reason of the protection against eviction enjoyed by the tenants under the Bombay Rents & Lodging Houses Rates Control Act 1947 (for short "the Bombay Rent Act") On repeal of the Bombay Rent Act by the Maharashtra Rent Control Act 1999 (for short "Maharashtra Rent Act), the respondent again served on the petitioner a notice to quit dated 11th January 2001. On the petitioner's failure to vacate the premises the respondent filed a suit, bearing T.E & R. Suit

238/252 of 2001, against the petitioner for eviction in the Small Causes Court, Mumbai. The respondent pleaded that the petitioner was a statutory corporation and also a government company registered under the Companies Act, 1956 having a paid up capital of more than rupees one crore and therefore the provisions of Maharashtra Rent Act were not applicable to the suit premises let out to it. The tenancy of the petitioner was duly terminated and therefore the respondent had no right to continue in occupation of the suit premises. It further pleaded that under section 41 of the Presidency Small Causes Court Act,1882 the Small Causes Court had the jurisdiction to entertain and try the suit. By filing a written statement, the petitioner contested the suit. The petitioner admitted receipt of the notice to quit. It also admitted in the written statement, though before me it is it is contended that the admission is erroneous and is not binding on it, that the provisions of the Maharashtra Rent Act were not applicable to the suit premises. The petitioner however contended that it was a public sector undertaking and the suit premises were public premises as defined under section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act,

1971 {for short "the Public Premises Eviction Act"} and therefore, the estate office appointed under the Act alone had the jurisdiction to pass an order of eviction and the Small Causes Court and no jurisdiction to try the suit.

3. After consideration of the evidence adduced before it, the trial court held that the provisions of Maharashtra Rent Act were not applicable to the suit premises as the petitioner was a public limited company having a share capital of more than rupees one crore. It also held that under section 41(1) of the Presidency Small Cause Courts Act, 1882 it had the jurisdiction to entertain and try the suit. It accordingly passed a decree for possession as also for the arrears of rent/mesne profits. On appeal the decision was confirmed by the appellate bench of the Small Causes Court by its judgement and order dated 4th May 2006. That judgement is impugned in this revision petition.

4. Learned counsel for the petitioner firstly submitted that the provisions of the Maharashtra Rent Act were applicable to the suit premises. The petitioner was a government company which could

neither be considered as a private limited company nor a public limited company. Government companies form a separate class by themselves. They are neither private limited companies nor public limited companies and therefore, the exemption from its applicability granted under sub-section (1) of section 3 of the Maharashtra Rent Act to private limited and public limited companies having paid up capital of more than rupees one crore was not applicable to the premises let out to a Government Company. In order to appreciate the contention of the petitioner, it would be appropriate to quote sub-section (1) of section 3 of the Maharashtra Rent Act which reads thus:

> 3(1) This Act shall not apply
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> (a) to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of

> the Government on such basis by, or in the name of, such officer;
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> (b) to any premises let or sub-let to banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, international agencies, multinational companies, and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.

Clause (b) of sub-section (1) of section 3 of the Maharashtra Rent Act says that it shall not apply to any premises let out or sublet to banks or any public sector undertakings or any corporation established by or any other central or state Act, or foreign missions, international agencies, multi-national companies and private limited companies and public limited companies having a paid up share capital of more than rupees one crore. Counsel submitted that exemption from the provisions of Maharashtra Rent Act was granted only in respect of the premises let or sublet to private limited companies and public limited companies having paid up share capital of more than rupees one crore. He submitted that the exemption was not applicable in respect of premises let or sublet to government companies irrespective of the amount of their

capital. Government companies formed a separate class by themselves. The expression "government companies" is not mentioned in clause (b) of sub-section (1) of section 3 and this omission of "government companies" cannot be filled up by the court by supplying the missing words - a casus omissus. In support, the learned counsel for the petitioner referred to and relied upon three decisions of the Supreme Court in i) State of Jharkhand Vs. Govind Singh reported in AIR 2005 S.C.294 (ii) Sangeeta Singh Vs. Union of India reported in AIR 2005 SC 4459 and (iii) Hindustan Steel Works Construction Ltd. Vs. State of Kerala reported in (1998) 2 Co.L.J. 383.

5. In State of Jharkhand Vs. Govind Singh (supra) the Supreme Court held when the words of a statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. In para 15 of the decision the court

further said that when the words were clear and there was no obsecurity, no ambiguity and the intention of the Legislature was clearly conveyed there was no scope for the Court to innovate or take upon itself the task of amending or altering the statutory provision.

6. In Sangeeta Singh Vs. Union of India & Ors. (supra) the Supreme Court held that while interpreting a statutory provision the Court only interprets the law and cannot legislate it. The legislative casus omissus cannot be supplied by judicial interpretative process (see para 9 of the decision). The Court further held that under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred; for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction put on a particular provision makes consistent enactment of the whole statute.

7. In Hindustan Steel Works Construction Pvt.Ltd. Vs. State of Kerala (Supra) the question that arose for consideration of the Supreme Court was whether the appellant therein, which was a government company wholly owned and controlled by the Central Government,was excluded from the purview of the Kerala Construction Works Welfare Funds Act 1989 on the ground that having regard to the deep and pervasive control of the appellate company by the Central Government the appellate company was essentially an establishment or an institution of the Government of India. The Supreme Court held that merely because there was deep and pervasive control of the government over the appellate company, and the appellate company on such account may be an institutionality or agency of the central government and as such a State within the meaning of Article 12 of the Constitution of India, it could not be held to be a department or establishment of the government in all cases. The Welfare Funds Act was essentially an Act to protect the interest of welfare of the labourers. Unless the institutionality or agency of the government was expressly kept outside the purview of the Act, it

would not be proper to interprete the Act by removing the corporate veil so as to exclude the appellate company from the purview of the Act.

8. Relying upon the aforementioned decisions counsel for the petitioner submitted that clause(b) of sub-section (1) of section 3 excludes only the premises let or sublet to private limited companies and public limited companies having a paid up share capital of more than rupees one crore from the purview of the Maharashtra Rent Control Act. The omission to mention government companies in clause (b) of sub-section (1) of section 3 was intentional. The omission cannot not be filled by the court. He submitted that government companies formed a class apart and since they were not mentioned in clause (b) of sub-section (1) of section 3 the premises let or sublet to them were not excluded from the purview of the Maharashtra Rent Control Act. Counsel also invited my attention to clause (a) of sub-section (1) of section 3 the first part of which says that the Rent Act shall not apply to the premises belonging to the government, local authority; and the second of it part says that it (the Act) would apply in respect of the premises let or given on

licence to the government or a local authority or taken on behalf of the government on such basis. If therefore, the counsel submitted, the Legislature wanted to exclude the premises let or sublet to the government companies also from the applicability of the Rent Act, the Legislature would have so provided by expressly including "government companies" either in the first part of clause (a) or in clause (b) of sub-section (1) of section 3 of the Maharashtra Rent Act.

9. The submission, attractive as it looks at the first blush, cannot be accepted. Section 3 of the Companies Act defines the words "existing company" "private company" and "public company". "Company" means a company formed and registered under the Companies Act. "Existing company" means company formed and registered under any of the earlier Companies Acts which were enacted before the Companies Act 1956. "Private company" (as it stood on 31st March 2000, when the Maharshtra Rent Control Act came into force) means a company which restricts the rights of the members of transferring its shares and limits the number of members to 50 (excluding certain categories of members) and which prohibits

invitation to the public to subscribe to any shares or debentures of the company. "Public company" (as it stood on the date of the commencement of the Maharashtra Rent Act) means a company which is not a private company. In other words, public companies are residuary class of companies and all companies which are not private companies are regarded as public companies. A government company would also has to fall under any of the two categories, it has to be either a private company or a public company. No third class of limited companies (excluding companies where liability of members is limited by guarantee or companies registered under section 25 of the Companies Act) is contemplated under the Companies Act. The amendment of the section 3 of the Companies Act effected by companies Amendment Act of 2000, also does not appear to have changed this position. However, it is not necessary to express any opinion about the effect of amendment 2000 as the same does not fall for consideration in this revision petition. As any government company also has to be either a private company or a public company, it was not necessary for the legislature to separately say in clause (b) of sub-section (1) of section 3 that the Maharashtra Rent Act would not

apply to the government companies having the paid up capital of more than rupees one crore. A government company having a paid up capital of more than rupees one crore could only be a private limited or a public limited company and the premises let or sublet to it would be covered by the exemption under sub-section (1) of section 3 of the Maharashtra Rent Act.

10. Assuming however, that government companies form a class apart and a government company would neither be a private limited company nor a public limited company but a different class by itself still, in my view, the provisions of Maharashtra Rent Act are not applicable to the suit premises in view of the fact it does not apply to the premises let or sub-let to public sector undertakings. Clause (b) of sub-section (1) of section 3 specifically provides that the Maharashtra Rent Act shall not apply to the premises let or sub-let to banks or any public sector undertakings or any corporation established by or under any central or state Act. Maharashtra Rent Act does not define the expression "public sector undertakings". Counsel for the petitioner submitted that the expression

"public sector undertakings" is also not defined in any other law. In view of the fact that the expression "public sector undertakings" has not been defined in the Maharashtra Rent Act or any other relevant law, the expression must be given the meaning as is commonly understood. The test applied in excise law that the words of common parlance must be given the meaning ascribed to them by a common man would equally apply for interpreting the meaning of the expression "public sector undertakings". Common man considers the corporations owned or controlled by the central or the state government as public sector undertakings. A corporation or a company whose entire or majority of the share capital is held and owned by the government or any organ or instrumentality of the government is regarded as a public sector undertaking by the common man. In my view, that is a common meaning of the phrase "public sector undertakings". A difficulty may arise in respect of the private-public joint ventures wherein 50% capital is held by private individuals or entities and the balance 50% of the share capital is held by the government or government entities. Some men may call it a private sector, some may call it a public

sector and others may call it a private public partnerships. However, that controversy does not arise in the present case as the entire share capital of the petitioner is held by General Insurance Corporation whose entire paid up capital in turn was held by the Central Government. Learned counsel for the petitioner submitted that the General Insurance Corporation has since transferred the entire share capital to the Government of India and the entire share capital of the petitioner company is presently held by the Central Government. The petitioner is thus not only a government company i.e. to say the company in which more than 50% of the share capital is held by the government but is a company whose entire share capital is held by the Central Government and in the past was held by the General Insurance Corporation, a wholly owned corporation of the Central Government. Thus, the petitioner is clearly a public sector undertaking within the meaning of clause (b) of sub-section (1) of section 3 of the Maharashtra Rent Act. Being a public sector undertaking the premises let to it are exempt from the provisions of Maharashtra Rent Act.

11. Learned counsel for the respondent invited

my attention to para 10 of the written statement wherein the petitioner has specifically averred that it is a public sector undertaking. It is true that an admission of law which is mistaken and essentially regarding the law or interpretation of a legal provision or a phrase may not entirely bind a party to the admission. However, it would certainly be an indicator of how the parties understood the meaning of the expression "public sector undertakings". The petitioner understood the phrase "public sector undertaking" to mean a Company, a corporation or an undertaking owned by the Government. This understanding of the meaning of the phrase by the petitioner is in consonance with the understanding of the common man. The petitioner, in my view, is a public sector undertaking and hence the premises let out to it are exempt from the provisions of Maharashtra Rent Act.

12. Learned counsel for the petitioner then submitted that the Small Causes Court had no jurisdiction to entertain and try the suit relating to eviction of the petitioner from the suit premises. He submitted that suits relating to possession of an immovable property could not be

tried by the Small Causes Court. He submitted that the suit premises being in lawful possession of the petitioner, which was a government company, were public premises within the meaning of section 2(e) of the Public Premises Eviction Act. A suit for possession of such public premises is barred by section 15 of the Public Premises Eviction Act and any action for eviction of the petitioner could only be instituted before the Estate Officer. In my view the contention has no merit and deserves to be rejected for the reasons indicated below:

13. Section 41 of the Presidency Small Causes Act, 1882 reads as under:-

> 41 (1) Notwithstanding anything contained elsewhere in this Act but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings between a licensor and licensee, or a landlord and tenant, relating to the recovery of possession of any immovable property situated in Greater Bombay, or relating to the recovery of the licence fee or charges or rent therfor, irrespective of the value of the subject matter of such suits or proceedings.
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> (2) Nothing contained in sub-section (1) shall apply to suits or proceedings for recovery of possession of any immovable property, or of licence fee or charges or rent thereof, to which the provisions of

> Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Government Premises (Eviction) Act, 1955, the Bombay Municipal Corporation Act the Maharashtra Housing and Area Development Act, 1976 or any other law for the time being in force, apply."

Sub-section (1) of section 41 provides that notwithstanding anything contained elsewhere in the Act, but subject to the provisions of sub-section (2), the Court of Small Causes Court would have jurisdiction to entertain and try all suits and proceedings between a licensor and a licensee or a landlord and a tenant, relating to the recovery of possession of any immovable property situate in Greater Bombay. Sub-section (2) is an exception to sub-section (1). Sub-section (2) of section 41 provides that sub-section (1) would not apply to suits or proceedings for recovery of possession of any immovable property to which the provisions of the Bombay Rent Act, Bombay Government Premises (Eviction) Act, Bombay Municipal Corporation Act, Maharashtra Housing & Area Development Act or any other law for the time being in force applied. Counsel submitted that the Public Premises Eviction Act was any other law for the time being in force and since the premises let out to the appellant fell

within the definition of "public premises" under section 2(e) of the Public Premises Eviction Act, sub-section (1) of section 41 of the Presidency Small Causes Act was not applicable by virtue of exemption carved out by sub-section (2) of the Presidency Small Causes Act. If the Public Premises Eviction Act is held to apply to the suit premises, sub-section (1) of section 41 of the Presidency Small Causes Court Act would not apply by reason of sub-section (2) thereof. In other words, if Public Premises Eviction Act applies to the suit premises, the proceedings for eviction cannot be instituted in the Small Causes Court under sub-section (1) of section 41 but would have to be instituted before the Estate Officer.

14. Learned counsel for the petitioner strongly relied upon the definition of "public premises" given in section 2(e) of the Public Premises Eviction Act which reads as under:-

> 2(e) "public premises" means
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> (1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before

or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, under the control of the Secretariat of either House or Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of, -

(i) any company as defined in section 3 of the companies Act, 1956, in which not less than fifty one per cent, of the paid up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first mentioned company

(ii) any corporation (not being a company as company as defined in section 3 of the Companies Act, 1956 or a local authority) established by or under a Central Act and owned or controlled by the Central Government.

(iii) any University established or incorporated by the Central Act.

(iv) any Institute incorporated by the Institutes of Technology Act, 1961

(v) any Board of Trustees constituted under the Major Port Trusts Act, 1963.

(vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 and that Board as and when re-named as the Bhakra-Baes Management Board under sub-section (6) of section 80 of that Act.

(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory.

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and

(3) in relation to the National Capital Territory of Delhi

(i) any premises belonging to the Municipal Corporation of Delhi, or any municipal committee or notified area committee,

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority, and

(iii) any premises belonging to or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory.

Clause (2) (ii) of section 2(e) of the Public Premises Act states that premises belonging to or taken on lease on behalf of any company owned or controlled by the Central Government would be public premises. Counsel submitted that since the entire share capital of the petitioner company was held by the Central Government the premises taken on rent by it were squarely covered by the definition of public premises under clause (2)(ii) of section 2(e) of the Public Premises Eviction Act. It is true that since the suit premises are let out to the petitioner which is a government company they would be public

premises under section 2(e) of the Public Premises Eviction Act. However, merely because a premises is a public premises does not mean that any eviction proceeding in respect of that premises is required to be taken under the Public Premises Eviction Act. Preamble to the Public Premises Eviction Act states that it is an Act to provide for eviction of unauthorised occupants from public premises and certain incidental matters. The Public Premises Eviction Act is enacted with a view of providing for easy procedure for eviction of persons in unauthorised occupation of the public premises. It is not enacted with a view of evicting the Government or Government Companies from the public premises or providing for easy procedure for eviction of Government or Government Companies in occupation of public premises (or premises of which they retain possession after termination of their tenancy). In Ashoka Marketing Ltd. Vs. Punjab National Bank reported in AIR 1991 SC 855, the Supreme Court has considered the meaning of public premises and the scope of its application of the Public Premises Eviction Act in relation to occupation by a tenant holding over and/or protected by a Rent Act. In paragraph no.63 of its decision,

the Supreme Court has observed :

> "This shows that the Public Premises Act has been enacted to deal with mischief of rampant unauthorised occupation of public premises by providing a speedy machinery for the eviction of persons in unauthorised occupation. In order to secure this object the said Act prescribed the time period for the various steps which are required to be taken for securing eviction of the persons in unauthorised occupation. The object underlying the enactment is to safeguard public interest by making available for public use premises belonging to Central Government, Companies in which the Central Government has substantial interest, Corporations owned or controlled by the Central Government and certain autonomous bodies and to prevent misuse of such premises."

The object of Public Premises Eviction Act is to provide for a speedy procedure for eviction of persons who unauthorizedly occupy the public premises. The object of the Public Premises Eviction Act is not to provide a speedy remedy to private landlords for eviction of the Government or Government Companies from the premises let out to them and held by them after termination of the tenancy by having resort to a proceeding of eviction before an Estate Officer. The interpretation suggested by the petitioner is contrary to the

purpose and intent of the Public Premises Eviction Act. The purpose of Public Premises Eviction Act is to provide for a speedy remedy to the Government or the Government Undertakings to evict unauthorised occupants from the public premises. The object is not to provide a machinery for eviction of the Government or a Government Corporations remaining in possession of private properties after termination of their tenancy.

15. The word "Public Premises is defined to be the premises belonging to the Central Government or taken on lease or requisition by the Central Government. If the word Public Premises was defined to mean only the premises belonging to the Government, then in respect of the premises which were taken on lease by Central Government, it would have had no recourse of eviction under the Public Premises Act if a stranger was to remain in occupation of such premises. In order to have the remedy which is available to the Central Government in respect of the premises owned by it, the definition also provided that the public premises would include the premises belonging to the Central Government or taken on lease or requisition by the

Central Government or a corporation owned or controlled by the Central Government. Thus, if a stranger were to encroach upon the suit premises which were taken on lease by the petitioner (government company) from the respondent, the petitioner would have had the remedy under the Public Premises Eviction Act against such stranger, it being public premises. However, if the owner were to institute the proceedings for eviction or the petitioner (a government company) continuing in occupation of the suit premises after termination of the lease, then the owner would not have the remedy of instituting the proceedings of eviction under the Public Premises Eviction Act. The owner in such a case would have to go in the normal courts as provided under the law of the land i.e. to the small causes court under sub-section (1) of section 41 of the Presidency Small Causes Courts Act. In my view, therefore, there is no merit in the contention that the Small Causes Court had no jurisdiction to entertain and try the suit under sub-section (1) of section 41 in view of sub-section (2) of the Presidency Small Cause Courts Act.

16. No other point was urged before me. There

is no merit in the Revision Application which is hereby dismissed.

17. After this judgement was pronounced in the open court, learned counsel for the petitioner requests for the stay of the execution of the decree to enable him to approach the Apex court. Mr.Kapadia learned counsel for the respondent has no objection for granting stay for a reasonable period of time. The decree passed by the Small Causes Court shall not be executed for a period of eight weeks.

D.G. KARNIK,J